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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/589,135

06/23/2008

Tim Wiens

85492-102

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04/14/2010

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EXAMINER

LATHAM, SAEEDA MONEE

ART UNIT

PAPER NUMBER

1782

MAIL DATE

DELIVERY MODE

04/14/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,135	<b>Applicant(s)</b> WIENS, TIM	
	<b>Examiner</b> Saeeda Latham	<b>Art Unit</b> 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 9-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/5/2010</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, drawn to a method of preparing an animal feed.

Group II, claim(s) 9-16, drawn to a method of increasing the amount of omega-3-fatty acids or CLA or DHA in an edible animal product.

2. For U.S. national stage applications under 35 U.S.C. 371, the inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons.

3. Groups I and II lack unity of invention because Group II requires feeding an animal, harvesting the edible animal product from the animal, increasing the omega 3 level or CLA levels, which is not required by Group I.

4. During a telephone conversation with Michael Williams on 3/24/2010 a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-8. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 9-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. **Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

6. The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

7. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. Since the scope of Group I and II are the same, upon allowance of the claims of Group 1, Group II including amendments based on the scope of claim 1 will be rejoined.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**10. Claims 1-3, 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glinsky USPA 20040037918 in view of Nahm USPN 4310558.**

11. Claims 1-3, 5-8 relates to a method of preparing an animal feed component. Glinsky teaches an extruded bird food product made from a mixture of grains, seeds, nuts and fresh fruits and vegetables (abstract). The bird food ingredients are mixed into dough, extruded and formed into multi-colored, multi-shaped pellets [0014]. The ingredients include vegetable such as flax seed, green split peas, yellow split peas, trappers peas; seeds/nuts include sunflower seeds [0019].

12. Glinsky does not teach the extrusion parameters. Nahm teaches an extruded fiber mixture pet food for a dry pet that has a tough, pliable, fibrous texture (abstract). The pet food comprised a green component such as peas (column 2, lines 61-62). In one embodiment ground peas are used (see Table IIa). The fibrous simulating pieces include soybeans (column 2, lines 65-67). Typical mechanical processes of the ingredients are at about 212°F to about 400°F and about 15 psig to about 300 psig to convert the mass into a flowable substance (column 5, lines 61-65). Since both teach a dried animal feed, it would have been obvious to one having ordinary skill in the art at

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the time of the invention to have utilized the extrusion conditions of Nahm to effectively produce the dried bird feed of Glinsky.

13. Neither Glinsky nor Nahm explicitly teach about 200 psi to about 400 psi. Nahm teaches the typical mechanical processes of the ingredients are at about 212°F to about 400°F and about 15 psig to about 300 psig to convert the mass into a flowable substance (column 5, lines 61-65). It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected about 200 psi to about 400 psi because of the overlapping range of Nahm.

14. Neither Glinsky nor Nahm explicitly teach temperature of 255F to 275F, 265F to about 268F, 300F to about 325F, or 325F to 335F. Nahm teaches the typical mechanical processes of the ingredients are at about 212°F to about 400°F and about 15 psig to about 300 psig to convert the mass into a flowable substance (column 5, lines 61-65). It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected about 255F to 275F, 265F to about 268F, 300F to about 325F, or 325F to 335F because of the overlapping range of Nahm.

**15. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glinsky USPA 20040037918 in view of Nahm USPN 4310558 in further view of Hodgson et al., USPN 4824683.**

16. Claim 4 relates to the ground pulse crop diameter. Glinsky teaches an extruded bird food product made from a mixture of grains, seeds, nuts and fresh fruits and vegetables (abstract). Glinsky is modified to have utilized the extrusion conditions of Nahm to effectively produce the dried bird feed of Glinsky.

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17. Glinsky nor Nahm teach the ground pulse crop diameter. Hodgson teaches the preparation of bread using pea bran that is ground into a size similar to flour, the average particle size of about 5 to 25 microns in diameter (column 4, lines 44-50). Since both Nahm and Hodgson teach ground peas in food, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilized ground pea that is to about 5 microns for food as taught by Hodgson to be used as the ground pea of Nahm to easily disperse the pea with other components to prepare the dried bird feed of Glinsky.

### ***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. L./

Examiner, Art Unit 1782

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1782